IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

OP.No. 16577 of 1995(W)

PETITIONER:

K.K.THOMAS, PROPRIETOR,
MUDRA TALKIES, KENICHIRA,
MOOLAKOLLY POST, WYNADU DISTRICT.

BY ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM

RESPONDENTS:
---

1. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM.

2. THE TAHSILDAR, SULTHANBATHERY TALUK, SULTHANBATHERY.

3. REVENUE DIVISIONAL OFFICER, MANANTHODY, WYNADU DISTRICT.

BY SR.GOVERNMENT PLEADER MR.MOHAMMED RAFIQ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE PHOTOGRAPHS OF THE MUDRA TALKIES, KENICHIRA.

EXT.P1(A) TRUE COPY OF THE PHOTOGRAPHS OF THE MUDRA TALKIES, KENICHIRA

EXT.P2 TRUE COPY OF THE CURRENT LICENCE OF MUDRA TALKIES, KENICHIRA

EXT.P3 TRUE COPY OF THE CERTIFICATE ISSUED BY THE KOOTHADY GRAMA PANCHAYAT DT.16.10.95

EXT.P4 TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DT.20.4.95

EXT.P5(A) TRUE COPY OF THE DEMAND NOTICE DT.20.4.95 SERVED ON THE PETITIONER ON 10.10.95 ALONG WITH EXT.P4

/ TRUE COPY /

H.L.DATTU, C.J. & K.T.SANKARAN,J.

O.P. NO. 16577 OF 1995

Dated this the 9th August, 2007

JUDGMENT

H.L.DATTU, C. J.

The petitioner has constructed a temporary thatched shed for running a cinema theatre, at Kenichira in Poothady Village of Sulthan Battery Taluk in Wynad District.

2. The Tahsildar, who is the competent authority under the provisions of the Kerala Building Tax Act, has completed the assessments and has levied building tax in a sum of Rs.50,400/-. Without questioning the correctness or otherwise of the same before the authorities provided under the Statute, the petitioner has approached this Court for the following reliefs:

> "i) call for the records relating to Exts.P4 and P4(a) from the second respondent and quash Ext.P4 and P4(a) by the issue of a writ of certiorari or other appropriate writ, direction or order;;
>
> ii) to strike down Section 5 of the Kerala Building Tax Act; 1975 (Act 7 of 1975) substituted by Section 6 of the Kerala Buildings Tax (Amendment) Act 1992 (Act 3 of 1992) and consequential other amendments introduced by Act 3 of 1992 in Act 7 of 1975 as arbitrary, unreasonable and unconstitutional;
>
> iii) to strike down the proviso to Section 11(1) and Section 13(4) of the Kerala Building Tax Act insisting on pre-deposit of tax to maintain an appeal or revision."

3. In so far as the first prayer is concerned, in our view, if for any reason, the petitioner is aggrieved by the orders passed by the Tahsildar

under the provisions of the Kerala Building Tax Act, he has got a right of appeal and a revision before the various forums created under the Statute itself. Therefore, the first relief sought for by the petitioner cannot be granted by us.

4. In so far as the second prayer is concerned, the same requires to be granted in view of the law laid down by this Court in **Shirly** v. **State of Kerala** (2006(2) KLT 306). Accordingly, the provisions of Section 5(2) is struck down on the ground that the same is arbitrary and violative of the constitutional provisions.

5. In so far as the third prayer is concerned, the appeal and revisional remedies are provided under the Act before the various forums created under the Statute itself. The various forums created under the Statute can definitely impose certain conditions to avail those remedies. In that view of the matter, the third prayer sought for in the Original Petition also cannot be granted by us. Therefore, we pass the following:

O R D E R

1) The Original Petition is disposed of.

2) If for any reason, the petitioner is aggrieved by the orders of assessment passed by the Tahsildar under the provisions of the Kerala Building Tax Act, he is permitted to prefer an appropriate appeal before the Appellate Authority within thirty days from today. If such an appeal is filed within the time granted by this Court, the Appellate Authority shall consider

the same on merits without reference to the period of limitation.

3) Provisions of Section 5(2) of the Building Tax Act is struck down by following the dicta of this Court in 2006(2) KLT 306 (supra).

3) The prayer No.3 is rejected.

4) In the facts and circumstances of the case, parties shall bear their costs.

Consequent to the order passed in the Original Petition, C.M.P.No.29977 of 1995 is dismissed.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.NO. 16577 OF 1995 W

JUDGMENT

9th August, 2007